

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 19 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In The Matter of

TELEPHONE NUMBER PORTABILITY

CC Docket No. 95-116  
RM 8535

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**MOTION TO ACCEPT LATE-FILED PLEADING**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby requests that the Federal Communications Commission (the "Commission") accept the attached "Comments" in the above-captioned proceeding one business day late. As will be shown below, good cause exists for the grant of TRA's Motion.

TRA experienced logistical difficulties beyond its control related to the physical transmission of the above-referenced Comments to the Commission's offices on the afternoon of August 16, 1996. Despite vigilant efforts, TRA was unable to deliver the Comments to the Office of the Secretary prior to the end of the Commission's official workday.

Grant of TRA's Motion would not result in harm to any party to this proceeding. Because the Comments are being submitted on the business day immediately following the filing deadline, the delay involved is nominal. Moreover, reply comments are not due until September 16.


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Good cause having been shown, TRA respectfully requests that the Commission grant its Motion and permit it to file Comments in the above-referenced docket one business day late.

Respectfully submitted,

**TELECOMMUNICATIONS  
RESELLERS ASSOCIATION**

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August 19, 1996

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## SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, offers the following recommendations in the captioned rulemaking proceeding:

- "Competitive neutrality" requires shared recovery of only those costs directly attributable to the deployment of a long-term number portability solution.
- Section 251(e)(2) contemplates recovery of the costs associated with number portability deployment from carriers, not end users.
- The "competitive neutrality" standard requires that the universe of carriers which should share the cost burden associated with deploying number portability should be limited to carriers providing local exchange service, based upon their relative participation in the local exchange services market. "Competitive neutrality" cannot be read to provide for contributions by carriers that do not offer local service and hence will not be the recipients of "ported" numbers.
- Within this universe of carriers, TRA believes that centralized database costs should generally be recovered from at least all facilities-based providers. In the short term, levying industry-wide number portability deployment costs only on those carriers that use the databases would favor incumbent local exchange carriers in violation of Section 251(c)(2)'s mandate of "competitive neutrality."
- A revenue-predicated allocation scheme comports well with the Commission's articulated "competitive neutrality" principles, but only if the revenues on which number portability cost recovery is based are revenues generated solely by the provision of local exchange service.
- "Competitive neutrality" is furthered, as the Further Notice correctly recognizes, by "subtract[ing] out charges paid to other carriers . . . when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation."
- TRA strongly opposes any recovery mechanism which permits ILECs to assess charges on competitive providers of local exchange service or the customers (or prospective customers) of such rival providers.
- TRA concurs with the Further Notice that the nonrecurring and recurring shared number portability costs should be "recovered through monthly charges to the individual carriers using the database, allocated in proportion to each carrier's

gross telecommunications revenues net of payments to other carriers." Per-query costs should be incorporated into the generally-applicable monthly charges assessed to recover subcategories one and two costs; costs of uploading or downloading number portability routing information, however, are better recovered through usage-specific charges.

- The least manipulatable and the most "competitively neutral" solution would be to require each LEC to bear its own costs of deploying number portability on its network.
- TRA strongly agrees with the Further Notice that "carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades." As the Further Notice correctly recognizes, all local exchange carriers -- competitive local exchange carriers, as well as ILECs -- will incur costs in structuring their networks to support number portability.
- TRA concurs with the Further Notice's tentative conclusion that consistent with its treatment of the costs associated with "800" number portability deployment, price cap carriers should be permitted to treat as exogenous costs which are directly related to the deployment of number portability, and which are not directly reimbursed; costs incurred in upgrading network facilities and infrastructure should not be so classified.

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**COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Further Notice of Proposed Rulemaking, FCC 96-286, released by the Commission in the captioned docket on July 2, 1996 (the "Further Notice"). In this further phase of the proceeding, the Commission will establish the mechanisms for the recovery of the costs associated with the deployment of long-term service provider number portability mandated in its First Report and Order.<sup>1</sup>

**I.**

**INTRODUCTION**

In its First Report and Order in this proceeding, the Commission adopted rules and regulations implementing the Congressional directive embodied in Section 251(b)(2) of the

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<sup>1</sup> Telephone Number Portability, CC Docket No. 95-116, FCC 96-286 (released July 2, 1996).

Telecommunications Act of 1996 ("1996 Act") that all local exchange carriers ("LECs") make available service provider number portability.<sup>2</sup> The Commission required LECs to initiate implementation of a long-term service provider number portability solution in the 100 largest Metropolitan Statistical Areas ("MSAs") no later than October 1, 1997, with deployment to be completed by December 1, 1998. In the interim, the Commission directed LECs to provide currently available number portability measures upon specific request from another carrier. The Commission adopted cost recovery principles applicable to such currently available number portability measures, but left to determination in this further phase of the proceeding the method by which the costs associated with long-term number portability solutions were to be recovered.

TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect the interests of entities engaged in the resale of telecommunications services. TRA's more than 450 members are all actively engaged in the resale of interexchange, international, local exchange, wireless and/or other telecommunications services and/or in the provision of products and services associated with such resale. TRA's resale carrier members will be among the many new market entrants that will soon be offering local telecommunications services, generally through traditional "total service" resale or by taking unbundled network elements and recombining them to create "virtual networks."

TRA has been an active participant in this proceeding, having already filed multiple rounds of comments and reply comments. TRA's interest in the proceeding has been,

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<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56, § 251(b)(2) (1996).



and continues to be, in speeding the availability of service provider number portability and in ensuring that long-term number portability is deployed in a manner that will promote and enhance competition in the local exchange/exchange access services market. The manner in which the costs associated with the deployment of long-term service provider number portability solutions will obviously be critical to these twin ends.

## II.

### ARGUMENT

Section 251(e)(2) of the 1996 Act mandates that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>3</sup> The Further Notice identifies a variety of issues that must be resolved in implementing this statutory directive, including specification of "the costs of establishing . . . number portability," identification of the "telecommunications carriers" which will bear those costs and creation of the mechanism by which those costs will be recovered, as well as adoption of the appropriate definition of "competitive neutrality."

#### A. General Cost Recovery Principles (¶¶ 208 - 211)

TRA generally concurs with the Further Notice's assessment that "three types of costs are involved in providing long-term service provider portability: (1) costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and

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<sup>3</sup> 47 U.S.C. § 251(e)(2).

maintain databases needed to provide number portability; (2) carrier-specific costs directly related to providing number portability . . . ; and (3) carrier-specific costs not directly related to number portability . . ."<sup>4</sup> TRA cautions, however, that while category 1 costs should be easily identifiable, it will be difficult to draw fine line distinctions between categories 2 and 3 costs. For example, the switch software installed to implement number portability, particularly if broadly defined, may well be usable and/or used for other purposes and hence may well have been installed by LECs without regard to of the Congressional number portability requirement.

TRA also concurs with the Further Notice that "competitive neutrality" requires shared recovery of only those costs directly attributable to number portability. The Further Notice is correct that the text of the statute allows for no other interpretation. The costs of network upgrades necessary to permit database inquiries are not "costs of establishing . . . number portability" and certainly will not be used solely to support number portability. Competitors should not be required to fund capital improvements to one another's networks under the guise of deploying number portability; indeed, this is the antithesis of competitive neutrality.

TRA also agrees with the Further Notice that Section 251(e)(2) contemplates recovery of the costs associated with number portability from carriers, not end users. Again, the mandate of Section 251(e)(2) is clear on its face -- "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers." To determine the universe of carriers from which number portability costs should be recovered, however, Section 251(e)(2)'s reference to "all telecommunications carriers" must be read in the context of the provision as a

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<sup>4</sup> Further Notice, FCC 96-286 at ¶ 208.

whole and with particular reference to the requirement that the costs be allocated on a "competitively neutral basis."

TRA submits that the "competitive neutrality" standard requires that the universe of carriers which should share the cost burden associated with deploying number portability should be limited to carriers providing local exchange service. "Competitive neutrality" certainly requires that all entities that will directly benefit from the deployment of number portability, either immediately or in the future, should contribute to the recovery of associated costs. Thus, because they will be the most immediate beneficiaries of number portability, competitive local exchange carriers ("CLECs") should help to fund number portability, and putting aside other public policy rationales, incumbent local exchange carriers ("LECs"), because they will ultimately benefit from customers' ability to "port" numbers back to their service, should also contribute. "Competitive neutrality," however, cannot be read to provide for contributions by carriers that do not offer local service and hence will not be the recipients of "ported" numbers; indeed, the opposite is true. A carrier which provides only interexchange service would be competitively disadvantaged *vis-a-vis* a carrier which provides both interexchange and local exchange services if required to contribute to the recovery of number portability costs because in making such contributions, it would be effectively funding its more diversified rival's competitive service offering.<sup>5</sup> "Competitive neutrality" thus requires that number portability deployment be funded

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<sup>5</sup> This, of course, is wholly apart from the illogic of imposing an assessment on a carrier which provides, for example, only international service between the United States and France to fund the ability of consumers in Des Moines to "port" their telephone numbers from one provider of local service to another.

by existing and new local exchange service providers, based upon their relative participation in the local exchange services market.<sup>6</sup>

Consistent with this theme, TRA agrees with the Further Notice's articulation of the principals with which any number portability cost recovery mechanism should comply. Thus, TRA agrees that a competitively neutral cost recovery mechanism should not "give one service provider an appreciable incremental cost advantage over another service provider, when competing for a specific subscriber," and should not "have a disparate effect on the ability of competing service providers to earn a normal return."<sup>7</sup> And TRA agrees with the Further Notice that the above pricing principals, and all other pricing guidelines and requirements adopted by the Commission in this proceeding, should govern the costs of deploying State-specific databases developed and implemented by those states which "opt out" of a national database plan.<sup>8</sup>

**B. Industry-wide Number Portability Deployment Costs (¶¶ 212 - 225)**

As the Further Notice correctly points out, industry-wide number portability costs include the costs associated with building, operating, administering and maintaining the multiple regional databases necessary to provide number portability.<sup>9</sup> The Further Notice queries whether

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<sup>6</sup> The only new market entrants that actually benefit directly from number portability are facilities-based CLECs. As the Commission has recognized, "[c]arriers taking unbundled elements or reselling services do not generate a cost of number portability." Further Notice, FCC 96-286 at ¶ 132, fn. 378.

<sup>7</sup> Further Notice, FCC 96-286 at ¶ 210.

<sup>8</sup> Id. at ¶ 211.

<sup>9</sup> Id. at ¶ 212.

the database administrator selected by the North American Numbering Council ("NANC") should recover these shared facilities costs from all carriers or from only those carriers that make actual use of the databases.<sup>10</sup> As noted above, TRA would define the universe of carriers that are required to fund number portability deployment as those that provide local exchange service; within this universe of carriers, TRA believes that centralized database costs should generally be recovered from at least all facilities-based providers. In the short term, levying industry-wide number portability deployment costs only on those carriers that use the databases would favor ILECs in violation of Section 251(c)(2)'s mandate of "competitive neutrality," because CLECs will make far greater initial use of the number portability databases upon their initial entry into the local market. However, TRA submits that to the extent that the regional number portability databases are used for purposes other than facilitating the simple ability of consumers to "port" their numbers among multiple local service providers, individual charges set by the database administrator, approved by the Commission and assessed on a nondiscriminatory basis would be appropriate. The shared database costs are, in TRA's view, better recovered on a national -- rather than a regional -- basis by either one of the neutral third-party regional database administrators or an entirely separate neutral overall system administrator pursuant to an allocative scheme established and overseen by the Commission.

TRA supports the principal espoused by the Further Notice that industry-wide costs associated with the deployment of number portability should be allocated on the basis of "total

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<sup>10</sup> Id.

gross telecommunications revenues minus charges paid to other carriers."<sup>11</sup> "Gross telecommunications revenues," however, should be defined as gross telecommunications revenues derived from the provision of local exchange service. TRA agrees with the Further Notice that a revenue-predicated allocation scheme comports well with its articulated "competitive neutrality" principles, but only if the revenues on which number portability cost recovery is based are revenues generated solely by the provision of local exchange service.<sup>12</sup> As discussed above, "competitive neutrality" cannot be achieved by taxing exclusively interexchange or international carriers for costs associated with the provision of local exchange service or by levying number portability fees on all revenues generated by a carrier which may provide only a modicum of local exchange service.

"Competitive neutrality" is, however, furthered, as the Further Notice correctly recognizes, by "subtract[ing] out charges paid to other carriers . . . when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation."<sup>13</sup> As the Further Notice explains, "[t]his is because the revenues attributable to such charges effectively would be counted twice in determining the relative number portability costs each carrier should pay -- once for the carrier paying such charges and once for the carrier receiving them."<sup>14</sup> As the Further Notice points out, such an approach is consistent with not only the manner in which

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<sup>11</sup> Id. at ¶ 213.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

the Commission has directed the North American Numbering Plan Administrator ("NANPA") to recover the costs of establishing telecommunications numbering administration arrangements under Section 251(c)(e)(2),<sup>15</sup> but the mechanism by which the Commission assesses regulatory fees.<sup>16</sup> In the former instance, the Commission observed:

Section 251(e)(2) requires that the costs of telecommunications numbering administration be borne by all telecommunications carriers on a competitively neutral basis. Contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, we require all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.<sup>17</sup>

The Further Notice also seeks comment on the manner in which costs incurred generally by ILECs which are specific to the deployment and usage of number portability databases should be recovered.<sup>18</sup> TRA strongly opposes any recovery mechanism which permits ILECs to assess charges on competitive providers of local exchange service or the customers (or

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<sup>15</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 343 (released August 8, 1996).

<sup>16</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶ 135 (released June 19, 1995).

<sup>17</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 at ¶ 343.

<sup>18</sup> Further Notice, FCC 96-286 at ¶ 215.

prospective customers) of such rival providers. As appropriate, ILECs could be reimbursed for their portion of the costs of facilities shared by all carriers in providing long-term number portability from a central fund administered by the database administrator under the direction of the Commission. Permitting an ILEC to recover number portability costs from rival providers of local exchange service would constitute a license to strategically manipulate costs and cost recovery mechanisms for competitive advantage. TRA submits, however, that the preferred approach may be to require all LECs to bear their own costs in this regard. Given that all facilities-based local exchange service providers will incur costs of this nature, "competitive neutrality" would be served by such an approach.

TRA agrees with the Further Notice that shared number portability costs fall into three subcategories: (i) the development and implementation of the database hardware and software and other non-recurring costs; (ii) database maintenance, operation, security and administration and other recurring costs; and (iii) costs associated with uploading, downloading and querying database information.<sup>19</sup> TRA concurs with the Further Notice that the first two subcategories should be "recovered through monthly charges to the individual carriers using the database, allocated in proportion to each carrier's gross telecommunications revenues net of payments to other carriers."<sup>20</sup> The third subcategory, TRA believes, should be recovered in a twofold manner. Per-query costs should be incorporated into the generally-applicable monthly charges assessed to recover subcategories one and two costs because the costs of querying the

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<sup>19</sup> Id. at ¶ 216.

<sup>20</sup> Id. at ¶ 217.



database are related to the ability of consumers to "port" their numbers among multiple local service providers. Costs of uploading or downloading number portability routing information, however, are better recovered through usage-specific charges.

**C. Direct Carrier-specific Number Portability Deployment Costs (§§ 221- 225)**

The Further Notice classifies as direct carrier-specific number portability deployment costs such costs as "the costs of purchasing the switch software necessary to implement a long-term number portability solution."<sup>21</sup> The Further Notice questions how these costs should be recovered.<sup>22</sup> TRA submits that the least manipulatable and the most "competitively neutral" solution would be to require each LEC to bear its own costs of deploying number portability on its network. A somewhat less attractive solution would be to arrange for reimbursement of such costs from a central fund administered by the database administrator under the direction of the Commission. Under no circumstances should LECs be allowed to recover these costs by assessing charges on competitive providers of local exchange service or the customers (or prospective customers) of such rival providers.<sup>23</sup> As discussed above, such a recovery mechanism would constitute a license to strategically manipulate costs and cost recovery

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<sup>21</sup> Id. at ¶ 221.

<sup>22</sup> Id.

<sup>23</sup> In the event that the Commission were to permit recovery of carrier-specific number portability deployment costs from end users, TRA submits that the only "competitively neutral" means of doing so would be through a general assessment on all subscribers within an area in which number portability is available. Recovery of costs from just those subscribers who change service providers would reduce the likelihood that consumers would "port" their telephone numbers, thereby favoring the incumbent provider.

mechanisms in order to secure a competitive advantage. Also as noted above, TRA urges the Commission to limit the universe of carriers that would contribute to any fund from which carrier-specific number portability deployment costs would be recovered to providers of local exchange service and more appropriately, facilities-based providers of such service.

**D. Indirect Carrier-specific Number Portability Deployment Costs (¶¶ 226- 229)**

The Further Notice classifies as indirect carrier-specific number portability deployment costs, costs which are "not directly related to the provision of number portability" and cites as examples "the costs of upgrading SS7 capabilities or adding intelligent network (IN) or advanced intelligent network capabilities (AIN) capabilities."<sup>24</sup> As the Further Notice explains, "[t]hese costs are associated with the provision of a wide variety of services unrelated to the provision of number portability, such as CLASS features," the provision of which services "will facilitate the ability of incumbent carriers to compete with the offerings of new entrants."<sup>25</sup>

TRA strongly agrees with the Further Notice that "carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades."<sup>26</sup> As the Further Notice correctly recognizes, all LECs -- CLECs, as well as ILECs -- will incur costs in structuring their networks to support number portability. ILECs may be required to upgrade certain network capabilities; CLECs will be required to incorporate such capabilities into their

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<sup>24</sup> Further Notice, FCC 96-286 at ¶¶ 226 - 27.

<sup>25</sup> Id. at ¶ 227.

<sup>26</sup> Id. at ¶ 226

network designs. Neither LEC subset should be required to fund the network infrastructure enhancements of the other, particularly since such enhancements would support capabilities other than number portability which could be used to provide more competitive service offerings. Moreover, as the Further Notice correctly observes, there is direct precedent for such an approach. Indeed, observations made by the Commission in allocating the costs associated with the deployment of "800" number portability are equally applicable here:

CCS7 represents a new network infrastructure that will not only support a number of new interstate and state services, but will also increase the efficiency which LECs provide existing services, basic and non-basic. As such, CCS7 represents a general network upgrade, the core costs of which should be borne by all network users. Accordingly, we will treat as the costs of providing data base access service only those costs that are incurred specifically for the implementation and operation of the data base system, and we direct the LECs to establish rates for data base access service based only on these specific costs. The costs of CCS7 components that will be used to support other services should be apportioned in accordance with existing rules for other network services.<sup>27</sup>

**E. Price Cap Treatment of Number Portability Deployment Costs (¶¶ 230)**

The Further Notice asks whether, in the event that it provides for recovery of number portability deployment costs from end users, such costs should be treated as "exogenous" under its price cap regulatory scheme.<sup>28</sup> TRA concurs with the Further Notice's tentative conclusion that consistent with its treatment of the costs associated with "800" number portability

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<sup>27</sup> Provision of Access for 800 Service, 4 FCC Rcd. 2824, ¶ 70 (1989), *recon.* 6 FCC Rcd. 5421 (1991), *further recon.* 8 FCC Rcd. 1038 (1993) (footnotes omitted).

<sup>28</sup> Further Notice, FCC 96-286 at ¶ 230.

deployment, price cap carriers should be permitted to treat as exogenous category one and some or all category two costs, but not category three costs. Thus, costs which a price cap carrier incurs which are directly related to the deployment of number portability, and which are not directly reimbursed, should be classified as exogenous, while costs incurred in upgrading network facilities and infrastructure would not be so classified. As the Commission emphasized in concluding that "the reasonable costs specific to implementing basic 800 data base service are outside the carrier's control and may, therefore, be treated as exogenous under price cap regulation," exogenous treatment should only be extended to "those costs incurred specifically for the implementation of . . . [the] service."<sup>29</sup> As the Commission explained:

Those costs which are not reasonable and which are not specifically incurred for the implementation and operation of the 800 data base system, such as core SS7 costs, will not be afforded exogenous cost treatment. Nor will the costs of accelerating SS7 deployment to meet our implementation timetable be granted exogenous treatment.<sup>30</sup>

And as with "800" number portability deployment costs, the burden should be on the price cap carrier to demonstrate that particular costs are incurred specifically for the deployment of local number portability.<sup>31</sup> Finally, to the extent that a price cap carrier assesses any charges associated with the deployment and availability of local number portability, TRA urges the Commission to create a new price cap basket for purposes of capping these charges.

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<sup>29</sup> Provision of Access for 800 Service, 8 FCC Rcd. 907, ¶¶ 27 - 28 (1993), *recon.* 11 FCC Rcd. 2014 (1995) (footnote omitted).

<sup>30</sup> Id. at ¶ 28.

<sup>31</sup> Id.


**III.**

**CONCLUSION**

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these comments.

Respectfully submitted,

**TELECOMMUNICATIONS  
RESELLERS ASSOCIATION**

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